

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

**ORDER AMENDING RULE 16
SUPERIOR COURT RULES OF CIVIL PROCEDURE**

This 1st day of January, 2011, IT IS ORDERED that:

(1) Superior Court Civil Rule 16 is amended by adding under (b)

Scheduling and planning a new subparagraph (4)(d) and (e) and by relettering current subparagraph (d) to (f) and (e) to (g):

(d) All memoranda, work products, and other materials contained in the case files of an ADR Practitioner or the Court related to the mediation are confidential. Any communication made in or in connection with the mediation which relates to the controversy being mediated, whether made to the ADR Practitioner or a party, or to any person made at a mediation conference, is confidential. The mediation agreement shall be confidential unless the parties otherwise agree in writing. Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

(i) Where all parties to the mediation agree in writing to waive the confidentiality;

(ii) In any action between the ADR Practitioner and a party to the mediation for damages arising out of the mediation; or

(iii) Statements, memoranda, materials, or other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation conference.

(e) If a mediation is not successful, no party may use

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statements made during the mediation or memoranda, materials or other tangible evidence prepared for the mediation at any point in the litigation in any way, including, without limitation, to impeach the testimony of any witness.

(3) These amendments shall take effect for all civil actions filed after January 1, 2011.